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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,712	12/23/2003	Melvin Robert Jackson	128521-1	5885

6147 7590 11/15/2007  
GENERAL ELECTRIC COMPANY  
GLOBAL RESEARCH  
PATENT DOCKET RM. BLDG. K1-4A59  
NISKAYUNA, NY 12309

EXAMINER
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ROE, JESSEE RANDALL

ART UNIT	PAPER NUMBER
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1793

NOTIFICATION DATE	DELIVERY MODE
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11/15/2007

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ldocket@crd.ge.com  
rosssr@crd.ge.com  
parkskl@crd.ge.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/747,712	<b>Applicant(s)</b> JACKSON ET AL.	
	<b>Examiner</b> Jessee Roe	<b>Art Unit</b> 1793	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 September 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) 23-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Status of the Claims***

Claims 1-32 are pending wherein claims 1-6, 10, 12-14 and 20-22 are amended and claims 23-32 are withdrawn from consideration.

### ***Status of Previous Objections***

The previous objections of claims 1-6, 10, 12-14 and 20-22 are withdrawn in view of the Applicant's amendments to the claims.

### ***Status of Previous Rejections***

The previous rejection of claim 10 under 35 U.S.C. 103(a) as being unpatentable over Hensel et al. (US 2,370,242) is withdrawn.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-17 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. (US 6,623,692).

Claims 1-17 and 19-22 are rejected on the same grounds as stated in the Office Action of 6 June 2007.

In regards to the amended features of claims 1-6, 10, 12-14 and 20-22, the Examiner asserts that the amendments would not change the grounds of rejection.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hensel et al. (US 2,370,242).

Claims 1-5 are rejected on the same grounds as stated in the Office Action of 6 June 2007.

In regards to the amended features of claims 1-5 the Examiner asserts that the amendments would not change the grounds of rejection.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson et al. (US 6,623,692) as applied to claim 17, and further in view of Manty et al. (US 4,305,998).

Claim 18 is rejected on the same grounds as stated in the Office Action of 6 June 2007.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 and 12 of copending Application No. 10/636407. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instantly claimed compositions are overlapped by the claims of co-pending application 10/636407.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-17 and 19-20 rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 14 and 17-29 of U.S. Patent No. 6,623,692. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instantly claimed compositions are overlapped by the compositions and application of the alloy of claims 14 and 17-29 of US Patent No. 6,623,692. The Examiner asserts that the rhodium-based alloy of claims 14 and 17-29 of U.S. Patent No. 6,623,692 would have "an A1-structured phase at temperatures greater than about 1000°C, in an amount of at least 90% by volume" because the composition of the rhodium-based alloy of claims 14 and 17-29 overlaps the composition of claims 1-17 and 19-20. MPEP 2112.01 I.

### ***Response to Arguments***

Applicant's arguments filed 5 September 2007 have been fully considered but are not persuasive.

First, the Applicant primarily argues that Jackson ('692) fails to disclose the specific alloy compositions as claimed in the present invention and there is no suggestion that the alloy described in Jackson ('692) would comprise an A1-structured phase at the high concentration of at least 90% by volume. In response, the Examiner notes that the rhodium-based composition disclosed by Jackson ('692) overlaps the composition of the instant invention. Therefore, the properties (including an A1-structured phase at temperatures greater than about 1000°C, in an amount of at least about 90% by volume) associated with that composition would be expected. MPEP 2112.01 I.

Second, the Applicant primarily argues that Hensel ('242) fails to teach, suggest, or disclose at least one element of the alloy composition as claimed in the present invention. In response, the Examiner notes that Hensel ('242) discloses 0.01 to 90 percent of a palladium-platinum group metal, which would include rhodium, and 10 to 99.99 percent of a refractory metal such as tungsten and molybdenum (pg. 1, col. 1) and the formation of alloys (pg. 2, col. 1, lines 33-47). The Examiner also notes that the instant claims do not require ruthenium, chromium, or a combination thereof because up to about 10% would include 0%.

Third, the Applicant primarily argues that Hensel ('242) does not adequately suggest an A1-structured phase at temperatures greater than about 1000°C. In response, the Examiner notes that the composition disclosed by Hensel ('242) overlaps the composition of the instant invention. Therefore, the properties (including an A1-structured phase at temperatures greater than about 1000°C, in an amount of at least about 90% by volume) associated with that composition would be expected. MPEP 2112.01 I.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jesse Roe whose telephone number is (571) 272-5938. The examiner can normally be reached on Monday-Friday 7:30 AM - 4:30 PM.

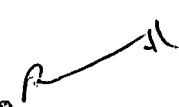
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Roy V. King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JR

  
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